

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

LAND CASE No.9 OF 2021

**THE REGISTERED TRUSTEES OF MORAVIAN
CHURCH IN SOUTHERN TANZANIA.....PLAINTIFF
VERSUS**

**DAR ES SALAAM CITY COUNCIL.....1ST DEFENDANT
THE COMMISSIONER FOR LANDS.....2ND DEFENDANT
THE ATTORNEY GENERAL.....3RD DEFENDANT
HEMED J. MFINANGA.....4TH DEFENDANT
HONORIS MWASHUBILA.....5TH DEFENDANT
ABEDI JAHA.....6TH DEFENDANT
SADI SELEMANI.....7TH DEFENDANT**

RULING

6/06/2023 & 21/07/2023

POMO, J

On 10th October, 2021 the plaintiff instituted this suit against the 1st; 2nd and 3rd defendants praying for judgment and decree as follows: -

*a) This court be pleased to declare the plaintiff to have the right to be granted right of occupancy of **plots No.160, 163, 176, 181 and***

107.

182 BLOCK "B" PART II TABATA LIWITI in the city of Dar es Salaam

*b) That, the 1st defendant and the 2nd defendant be ordered to allow the plaintiff pay taxes and other levies for the grant of the suit plots and register the said **plots No.160, 163, 176, 181 and 182***

BLOCK "B" PART II TABATA LIWITI

*c) That, the 1st and 2nd defendants be issued with a restraint order not to interfere with the peaceful occupation and use of the land comprising plots **No.160, 163, 176, 181 and 182 BLOCK "B"***

PART II TABATA LIWITI

d) Costs be provided for, lastly;

e) Any other order which this court deems fit to grant

On 1st February,2023 Vide ERV No. 25004171 the plaintiff amended her plaint to include the 4th to 7th defendants being pursuant to the order of this court dated 30th November,2022 Hon. J.F. Nkwabi, J. The amended plaint didn't bring any new prayer in it instead retained prayers made in the former plaint. The suit came for mention on 17th April, 2023 and the court fixed it to come for hearing on 18/05/2023

When the suit came on 18/05/2023 for hearing, it was noted by this court and raised a *suo motu* issue against the plaintiff's suit, the plaint for that matter, as follows: -

"Court: *Upon going through the plaint, I have noted that the plaint filed by the plaintiff **does not show when the cause of action arose** hence putting this court into a position of not being certain as to whether it has jurisdiction or not.*

In view of that, I hereby invite the parties to address the court on the competence of the suit".

By consensus, it was agreed the above raised issue be disposed by way of written submissions whereby schedules of filing submissions was set and parties have complied with. I thank counsel for their job well done in complying the court order in filing submissions for and against the *suo motu* raised issue.

Having gone through the respective submissions by the parties, I have observed that, instead of addressing the core issue raised on whether or not the plaint by the plaintiff discloses as to when the cause of action arose or not, the counsel for the plaintiff laboured his time in explaining on whether

the plaint discloses the cause of action without deliberating when the said cause of action arose. A mention is only made on a statutory notice of intention to sue the 1st to 3rd defendants which is annexture "G" to paragraph 12 of the said amended plaint. Reading the contents of which, the same do not depict as to when the cause of action arose. Likewise, the submission made by the defendants' counsel is centered on countering that the suit does not disclose the cause of action without more. That being the case, I will be guided by the plaint itself.

It is a settled law that the court must be certain if it is possessed with the requisite jurisdiction before hearing and determining any matter before it. In **Richard Julius Rukambura versus Isaack Ntwa Mwakajila and Another**, Civil Appeal No.2 of 1998 CAT at Mwanza (Unrepted) the Court of Appeal had this to state, at page 5, I quote:

"The question of jurisdiction is paramount in any court proceedings. It is so fundamental that in any trial even if it is not raised by the parties at the initial stages, it an be raised and entertained at any other stage of the proceedings in order to ensure that the court is properly vested with jurisdiction to adjudicate the matter before it".

18.

Also, in **Fanuel Mantiri Ng'unda versus Herman M Ngunda**, Civil Appeal No.8 of 1995 CAT (unreported) the Court of Appeal stated thus: -

*"...the question of jurisdiction is so fundamental that courts must as a matter of practice on the face of it be certain and assured of their jurisdictional position at the commencement of the trial. **It is risky and unsafe for the court to proceed on the assumption that the court has jurisdiction to adjudicate upon the case**".*

Under Order VII Rule 1(e) of the Civil Procedure Code, [Cap.33 R.E. 2022] the law provided thus: -

"Rule 1 – the complaint shall contain the following particulars –

(a) N/A

(b) N/A

(c)

(d)

(e) The facts constituting the cause of action **and when it arose**".

End of quote

The essence of the legal requirement set under the above referred Order VII Rule 1(e) of the CPC is not farfetched. It is there to enable the court know if the suit before it is not time barred.

The plaintiff's suit contains twenty-one (21) paragraphs. I have critically gone through those 21 paragraphs of the plaint and I find nowhere is stated as to when the cause of action arose. Under paragraph 21 of the plaint the plaintiff stated sated the value of the suit land to be Tshs 160,000,000/- which entails was showing pecuniary jurisdiction of this court.

In my view, and guided by the above cited decisions of the court of appeal, failure to disclose as to when the cause of action arose have made the suit herein be incompetent before the court as the court is not certain as to whether it has jurisdiction or not as far as limitation of time to sue is concerned

Consequently, I hereby struck out the suit with leave to refile subject to the limitation of time. I make no order as to costs.

It is so ordered

Right of Appeal explained to any aggrieved party

Dated at Dar es Salaam this 21st day of July, 2023



MUSA K. POMO

JUDGE

21.07.2023

Ruling is delivered on this 21st July, 2023 in presence of Mr. Barnaba Luguwa, learned counsel for the plaintiff, Mr. Thomas Mahushi, learned state attorney for the 1st; 2nd and 3rd Defendants also holding brief of M/s Athanasia Soka, learned counsel for the 4th to 7th Defendants



A handwritten signature in blue ink, appearing to read "M.K. Pomo", is written above the printed name.

MUSA K. POMO

JUDGE

21/07/2023